



September 4, 2007

**VIA E-MAIL
VIA FAXIMILE**

Mr. John R. Mengel
Chief Economist
USDA/AMS/Dairy Programs
Office of the Chief Economist
STOP 0229 - Room 2753
1400 Independence Ave., SW
Washington, DC 20250-0229

Re: Doc. #AMS-07-0047; DA-06-07 – Dairy Product Mandatory Reporting

Dear Mr. Mengel:

These comments are on behalf of Dean Foods in response to the Dairy Product Mandatory Reporting Interim Final Rule published in the Fed. Reg. on Tuesday, July 3, 2007 (Vol. 72, No. 127 p 36341-45). Dean Foods appreciates the chance to comment on this Interim Final Rule.

Dean Foods is grateful that USDA has taken action to implement the rule, while allowing time for the industry to comment. We would urge the Department to quickly review the industry comments, make any justified tweaks, and move to the Final Rule without delay.

It is Dean Foods' belief that the use of product price formulas requires accurate and current commodity market prices to reflect proper values to both processors and dairy farmers. As stated in the rule and as experienced earlier in this year's price reporting, errors can cause significant impact to both parties. Regardless of the benefit, or harm, caused to a party because of the error, the whole industry loses credibility and the supply and demand signals are restrained such that the necessary market response is muted. It is with these thoughts in mind that Dean Foods would offer two comments. First, Dean Foods requests that Certified Organic be added to the list of exempted sales

transactions for each product. Second, Dean Foods would strongly urge maintaining the 30 day window with respect to forward priced contracts.

The use of Certified Organic product in the commodity survey prices will distort the price signal. It is a well-established fact that organic milk carries with it a different, higher, cost structure than non-organic milk. Without clearly defined rules to exclude Certified Organic product, it would have the effect of mixing this higher cost structure into the price basis for all milk. This would result in raising the milk cost to processors of non-organic products. This is inconsistent with the idea of having sound economic signals. Dean Foods would encourage USDA to excluded Certified Organic products from the Dairy Products Prices Survey.

Dean Foods would strongly support USDA maintaining the intent of the following exemption used in each product description: "...forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed)." Dean Foods agrees with the clarity provided in IDFA's letter between the term "forward contract" and "forward price." Regardless of the preferred wording, Dean Foods believes that a price, not a formula, established any more than 30 days prior to exchange of product should be excluded from the Dairy Product Prices Survey.

The time between establishing the product price and transaction is a very critical element. The reason for the critical nature was noted by the Secretary in the Final Order Reform Decision as published in the April 2, 1999 Federal Register [FR Doc. 99-6547]. In discussing the timing of Class II pricing the Secretary concluded the following: "However, especially with the shortened period of advanced pricing, in most cases the linkage should remain close enough so that the Class II differential does not encourage the drying of milk for Class II uses just to receive a price advantage." (Page 16104) Because milk is priced approximately every 30 days it seems that one needs to keep the related commodity prices in alignment. Using something other than 30 days would allow for a distortion to develop. This distortion could provide for price advantages that in the case of Class II milk would promote exactly what the Secretary wanted to avoid in Reform, the use of dried milk instead of fresh milk for a price advantage.

The use of any length greater than 30 days as a time limit on establishing the price prior to product changing hands is not justified, regardless of the customer. The current procedures in place are tied to 30 days and the industry took significant notice when an error was found and corrected this spring. The industry also observed significant variance between California Weighted Average Price (CWAP) and the NASS. A hearing was held last week in which proposals were heard to alter the pricing rules for establishing the CWAP. Dairy Institute of California (of which Dean Foods is a member) proposed that California adopt the Interim Final Rule as their provisions such that 30 days would be used in both CWAP, as is currently the case in the NASS.

USDA should not be influenced to make a change to fix different pricing protocols. USDA should continue to stay focused on timely prices being used in establishing uniform prices to handlers. As drafted, this rule with 30-day pre-pricing limit

accomplishes this goal and adding an exemption for Certified organic product, would simply serve to strengthen that connection.

Thank you for a chance to offer Dean Foods' view for your consideration on this important topic. If you or your staff has any questions, please do not hesitate to contact me at 214-721-1158.

Respectfully submitted,

A handwritten signature in cursive script that reads "Evan Kinser". The ink is dark and the signature is fluid.

Evan Kinser
Director, Dairy Policy and Commodity
Procurement

EWK

cc: Mr. Ernest Yates